

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MEGLODON FINANCIAL, LLC,	)	NO. SACV 09-01355 GW (SS)
	)	
Plaintiff,	)	
	)	ORDER REMANDING ACTION TO THE
v.	)	SUPERIOR COURT OF CALIFORNIA FOR
	)	THE COUNTY OF ORANGE
RENADA NADINE MARCH,	)	
	)	
Defendant.	)	
_____	)	

On November 16, 2009, Defendant Renada Nadine March ("Defendant") filed a Notice of Removal. Defendant removed the instant action to this Court from the California Superior Court for the County of Orange. Defendant attached the state court Complaint (see Notice of Removal, Exh. A); Defendant's Answer (see Notice of Removal, Exh. B); and Defendant's Amended Answer (see id.) to the Notice of Removal. Defendant asserts that removal is proper pursuant to 28 U.S.C. § 1443(1) and § 1446(b).<sup>1</sup> (Notice of Removal at ¶¶ 10, 11).

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<sup>1</sup> 28 U.S.C. § 1443(1) provides:

1 On November 24, 2009, the Court issued an Order to Show Cause Why  
2 Action Should Not Be Remanded to State Court because there did not  
3 appear to be any basis for federal jurisdiction. Defendant filed a  
4 Response to the Order to Show Cause ("Response") on December 1, 2009.  
5 The Court has considered the Response and finds that it fails to justify  
6 removal.

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8 The Court is required to consider issues related to federal subject  
9 matter jurisdiction and may do so sua sponte. Steel Co. v. Citizens For  
10 A Better Environment, 523 U.S. 83, 93-94, 118 S. Ct. 1003, 140 L. Ed. 2d  
11 210 (1998). In the case of a removed action, a district court must  
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13 Any of the following civil actions or criminal prosecutions,  
14 commenced in a State court may be removed by the defendant to  
15 the district court of the United States for the district and  
division embracing the place wherein it is pending:

16 (1) Against any person who is denied or cannot enforce in the  
17 courts of such State a right under any law providing for the  
18 equal civil rights of citizens of the United States, or of all  
persons within the jurisdiction thereof[.]

19 28 U.S.C. § 1446(b) provides:

20 The notice of removal of a civil action or proceeding shall be  
21 filed within thirty days after the receipt by the defendant,  
22 through service or otherwise, of a copy of the initial  
23 pleading setting forth the claim for relief upon which such  
24 action or proceeding is based, or within thirty days after the  
service of summons upon the defendant if such initial pleading  
has then been filed in court and is not required to be served  
on the defendant, whichever period is shorter.

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26 In addition, Plaintiff cites Dombrowski v. Pfister, 380 U.S. 479,  
27 85 S. Ct. 1116, 14 L. Ed. 2d 22 (1965), as a basis for removal. (Notice  
of Removal at ¶ 11). However, Dombrowski is not on point and provides  
28 no basis for removal.

1 remand the case to state court if at any time before the final judgment  
2 it appears that the district court lacks subject matter jurisdiction.  
3 Guas v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). "[R]emoval  
4 statutes are strictly construed against removal." Luther v. Countrywide  
5 Home Loans Servicing LP, 533 F.3d 1031, 1034 (9th Cir. 2008)(citations  
6 omitted). Doubts regarding the propriety of the removal therefore favor  
7 remanding the case. Gaus, 980 F.2d at 566.

8  
9 In the present case, removal was improper because there is no basis  
10 for federal jurisdiction. The pleadings do not allege a basis for  
11 diversity jurisdiction under 28 U.S.C. § 1332. (See Notice of Removal,  
12 Exh. A; Civil Cover Sheet at 1 (listing California addresses for both  
13 Plaintiff Meglodon Financial LLC ("Plaintiff") and Defendant)). In  
14 addition, contrary to Defendant's assertion (see Response at 7), it is  
15 not clear that the action meets the amount in controversy requirement  
16 for diversity jurisdiction. Pursuant to 28 U.S.C. § 1332(a), a federal  
17 court does not have jurisdiction over a diversity case unless the amount  
18 in controversy "exceeds . . . \$75,000, exclusive of interest and costs."  
19 Plaintiff filed this action in California state court as a limited civil  
20 case, demanding damages of less than \$10,000. (See Notice of Removal,  
21 Exh. A at 1). Plaintiff seeks only possession of the premises, costs  
22 incurred in this proceeding, and rent at a daily rate of \$76.67 for the  
23 period of October 14, 2009 through the date of entry of judgment. (See  
24 id. at 3). Thus, this action does not meet the minimum jurisdictional  
25 amount. See, e.g., Deutsche Bank Nat'l Trust Co. v. Franco, 2009 WL  
26 3045972, at \*1 (N.D. Cal. Sept. 23, 2009) ("Plaintiff's action is for  
27 unlawful detainer. The complaint was filed as a limited civil action,  
28 meaning that the amount in controversy is less than \$10,000. In

1 addition, the amount of damages sought in the complaint is \$30 per day,  
2 accruing since July 14, 2009. Thus, at the time of removal, less than  
3 \$2,000 in damages was at stake. Based on the record presented, it is  
4 facially apparent that this case does not meet the minimum amount in  
5 controversy to satisfy the requirements of 28 U.S.C. § 1332." ).

6  
7 Similarly, there is no basis for federal question jurisdiction  
8 under 28 U.S.C. § 1331. The underlying state court action is an  
9 unlawful detainer action against Defendant. (Notice of Removal, Exh. A  
10 at 1). The Complaint alleges only state law claims against Defendant.  
11 Although Defendant asserts that the Complaint violates her federal  
12 constitutional rights (see Notice of Removal at ¶¶ 3-11), a defendant  
13 generally may not create removal jurisdiction based upon her defenses or  
14 counterclaims. See Franchise Tax Bd. v. Constr. Laborers Vacation  
15 Trust, 463 U.S. 1, 10, 103 S. Ct. 2841, 77 L. Ed. 2d 420 (1983) ("For  
16 better or worse . . . a defendant may not remove a case to federal court  
17 unless the plaintiff's complaint establishes that the case 'arises  
18 under' federal law."), superseded by statute on other grounds as stated  
19 in Ethridge v. Harbor House Rest., 861 F.2d 1389, 1392 n.3 (9th Cir.  
20 1988); see also Caterpillar Inc. v. Williams, 482 U.S. 386, 393, 107 S.  
21 Ct. 2425, 96 L. Ed. 2d 318 (1987) ("[A] case may not be removed to  
22 federal court on the basis of a federal defense").

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Nor does this case fall into the narrow class of cases removable

1 under 28 U.S.C. § 1443(1).<sup>2</sup> The Supreme Court has held that, for a case  
2 to be removable under section 1443(1), the removal petition must meet  
3 two requirements. "First, it must appear that the right allegedly  
4 denied the removal petitioner arises under a federal law 'providing for  
5 specific civil rights stated in terms of racial equality.'" Johnson v.  
6 Mississippi, 421 U.S. 213, 219, 95 S. Ct. 1591, 44 L. Ed. 2d 121 (1975)  
7 (quoting Georgia v. Rachel, 384 U.S. 780, 792, 86 S. Ct. 1783, 16 L. Ed.  
8 2d 925 (1966)); see also Arizona v. Carroll, 2009 WL 3219272, at \*2 (D.  
9 Ariz. 2009) ("Broad contentions of deprivations of equal protection and  
10 due process . . . will not support removal under § 1443(1)." (internal  
11 quotation marks omitted)). Second, either the denial of the specified  
12 right must "be manifest in a formal expression of state law" or the  
13 defendant must show that there is "an equivalent basis . . . for an  
14 equally firm prediction that the defendant would be denied or cannot  
15 enforce the specified federal rights in the state court." Rachel, 384  
16 U.S. at 803 (internal quotation marks omitted).

17  
18 Defendant meets neither of these requirements. Defendant asserts  
19 that the unlawful detainer action denies her civil rights on the basis  
20 of her gender and age. (Notice of Removal at ¶¶ 3, 7). She has not  
21 alleged that her rights are being denied "under a federal law providing  
22 for specific civil rights stated in terms of racial equality." Johnson,  
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25 <sup>2</sup> Appropriately, Defendant does not assert the case is removable  
26 under 28 U.S.C. § 1443(2). "[T]he second subsection of § 1443 confers  
27 a privilege of removal only upon federal officers or agents and those  
28 authorized to act with or for them in affirmatively executing duties  
under any federal law providing for equal civil rights." City of  
Greenwood v. Peacock, 384 U.S. 808, 824, 86 S. Ct. 1800, 16 L. Ed. 2d  
944 (1966).

1 421 U.S. at 219 (internal quotation marks omitted); see also California  
2 v. Sandoval, 434 F.2d 635, 636 (9th Cir. 1970) (per curiam) ("[Removal]  
3 petitioners must assert, as a defense to the [action], rights that are  
4 given to them by explicit statutory enactment protecting equal racial  
5 civil rights."); Grievance Adm'r v. Fieger, 409 F. Supp. 2d 858, 863  
6 (E.D. Mich. 2005) (remanding case when removing party "has not alleged,  
7 nor can he show, that he suffered a deprivation of equal rights because  
8 of his race").

9  
10 Despite clear Supreme Court and Ninth Circuit precedent on this  
11 point, Defendant asks this Court to extend the reach of § 1443(1) to  
12 encompass cases, like this one, that have nothing to do with race. (See  
13 Response at 10). However, this Court lacks the authority to overrule or  
14 ignore decisions of the Ninth Circuit or the Supreme Court. See, e.g.,  
15 Roper v. Simmons, 543 U.S. 551, 594, 125 S. Ct. 1183, 161 L. Ed. 2d 1  
16 (2005) ("[I]t remains this Court's prerogative alone to overrule one of  
17 its precedents. That is so even where subsequent decisions or factual  
18 developments may appear to have significantly undermined the rationale  
19 for our earlier holding." (internal citation and quotation marks  
20 omitted)); Hart v. Massanari, 266 F.3d 1155, 1170 (9th Cir. 2001)  
21 ("Binding authority must be followed unless and until overruled by a  
22 body competent to do so."); Powell v. Arkansas, 310 F. Supp. 142, 144  
23 (W.D. Ark. 1970) ("The United States Supreme Court has not chosen to  
24 extend removal under 28 U.S.C. § 1443 and this Court does not consider  
25 it wise nor legal to do so.").

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28 Defendant also fails to satisfy the second prong of the test. She

1 has neither identified a formal expression of state law that manifestly  
2 denies her rights nor shown an equivalent basis for a firm prediction  
3 that she will not be able to enforce her rights in the California  
4 courts. Defendant asserts that certain state "customs, practices, and  
5 policies" will result in a denial of her rights. (Response at 5; see  
6 also Notice of Removal at ¶ 13). However, this assertion alone cannot  
7 support removal under Section 1443(1), which only permits removal "in  
8 the rare situations where it can be clearly predicted by reason of the  
9 operation of a pervasive and explicit state or federal law that those  
10 rights will inevitably be denied by the very act of bringing the  
11 defendant to trial in the state court." Peacock, 384 U.S. at 828  
12 (emphasis added). Nowhere in the Notice of Removal or Response does  
13 Defendant identify an explicit legislative enactment that will  
14 inevitably deny her rights. Instead, she argues that, based upon advice  
15 she received at the Orange County Legal Aid Clinic that "defendants [in  
16 California] in [u]nlawful [d]etainer actions have no effective defense  
17 or counterclaims." She therefore believes her civil rights are  
18 violated. (Notice of Removal at ¶ 4; see also Response at 5). She also  
19 refers to anecdotal evidence from unidentified witnesses that the  
20 California courts provide litigants pursuing unlawful detainer actions  
21 "an unfair advantage" over their opposing parties. (Response at 4).  
22 Defendant's allegations do not satisfy the statute's requirements for  
23 removal.

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28 The Supreme Court recognized in Peacock:

1 It is not enough to support removal under § 1443(1) to allege  
2 or show that the defendant's federal equal civil rights have  
3 been illegally and corruptly denied by state administrative  
4 officials in advance of trial, that the charges against the  
5 defendant are false, or that the defendant is unable to obtain  
6 a fair trial in a particular state court.

7  
8 Peacock, 384 U.S. at 827. Rather, the defendant must show that her  
9 federal rights "will inevitably be denied by the very act of bringing  
10 the defendant to trial in the state court." Id. at 828. Defendant has  
11 not met this standard. Accordingly, this case does not fall into the  
12 "specific and extremely narrow" grant of removal jurisdiction under 28  
13 U.S.C. § 1443(1).<sup>3</sup> Davis v. Superior Court, 464 F.2d 1272, 1273 (9th  
14 Cir. 1972).

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19 Consistent with the foregoing, Defendant's requests for discovery  
20 and an evidentiary hearing are DENIED. IT IS ORDERED that this action

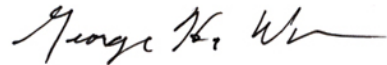
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21  
22 <sup>3</sup> Defendant asks for an evidentiary hearing to establish that the  
23 case is removable under Section 1443(1). (See Response at 4).  
24 Generally, a section 1443(1) removal petitioner is entitled to notice of  
25 a proposed remand and "an opportunity to present his arguments in  
26 opposition." California v. Pobuta, 437 F.2d 1200, 1200 (9th Cir. 1971)  
27 (per curiam). Defendant has received both: the Order to Show Cause  
28 provided notice and she presented her opposing arguments in her  
Response. Moreover, where, as here, "it is perfectly apparent that the  
very narrow ground for removal not only is not, but cannot conceivably  
be stated," no evidentiary hearing is necessary. Davis, 464 F.2d at  
1273.



1 is REMANDED to the Superior Court of California for the County of  
2 Orange. The Clerk of the Court shall serve copies of this Order on  
3 Defendant and counsel for Plaintiff.

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6 DATED: December 11, 2009.

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10 GEORGE H. WU  
11 UNITED STATES DISTRICT JUDGE  
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13 PRESENTED BY:

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16 SUZANNE H. SEGAL  
17 UNITED STATES MAGISTRATE JUDGE  
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